reasonable for the husband to remain in England from September 1955, until about March 1956, he was not entitled to recover as damages his loss of earnings during that period. In the course of his argument counsel for the plaintiff submitted that if a daughter or a sister gave up lucrative employment to nurse an injured father or brother she would have a cause of action against the driver provided only that the court was satisfied that in the circumstances it was reasonable to do so. Commenting on this argument, Diplock J. said:

"However commendable may be the sacrifice made by the relative of the injured person, she has, in my opinion, no remedy in law against the driver of the vehicle which caused the injuries, because the driver owes no duty to her."

It is clear, therefore, that the third plaintiff has no right of action.

In any case the third plaintiff has not satisfied me that she was doing embroidery work at home.

Mr. Tan submits that Lai Chi Kay can recover the travelling and other expenses and the loss of earnings of the mother. He relies on the case of *Donnelly* v. *Joyce*.[8] In that case a minor, aged six years, having sustained leg injuries in a road accident, included in his claim for damages (i) the travelling expenses of his parents to and from hospital on visits; (ii) the cost of special socks and surgical boots; and (iii) two years loss of wages incurred by his mother who had to give up her job in order to nurse and look after him. Items (i) and (ii) were not contested by the defendant but (iii) was disputed on the basis that as there was no legal obligation to reimburse his mother such a claim could not succeed. The trial court awarded the plaintiff £147 representing the mother's loss of wages for six months. On appeal it was held that since the loss to the plaintiff caused by the defendant's wrongdoing included the existence of the need for the nursing services provided by his mother he was entitled to recover her loss of wages of £147 as the proper and reasonable cost of supplying that need.

Mr. Tan submits that the loss of the mother in this case is in fact Lai's loss because of the existence of the need of companionship of his mother. I am of the view that *Donnelly's* case does not help Lai. There is no medical evidence that there was a need for the companionship of the mother for the rehabilitation of Lai. The medical evidence I have is that the companionship of the mother "went a great way towards his rehabilitation." Even then there is no evidence in what way the companionship of the mother had helped towards the rehabilitation of Lai. Dr. Don agreed that it depended to a great extent on the closeness between mother and son. Dr. Don was not in the position to say if there was a close bond between mother and son but he said from his observation over the years he would say that they were quite close. There is no other evidence. I don't think one can really say that the companionship helped towards the rehabilitation of Lai.

For the reasons that I have given, the fourth plaintiff or Lai cannot recover the loss suffered by the fourth plaintiff.

Lai has also claimed special damages. The defendant has agreed to the following claims: item (4) $678, item (12) $156, item (13) $150, item (14) $80 and item (20) $10, totalling $1,074.

The defendant has disputed the following claims:

(a) Item (6) Hostel charges from 20/3/79 to 5/7/80 @ $180 p.m. ... $2,640.

I allow this claim. These charges were incurred by Lai in an attempt to mitigate damages in attempting to do a course in Radiography. If Lai had lived with his parents he would not have incurred these additional charges.

(b) Items (15), (16) & (17) Air fares to and from Hong Kong.

It is said that the trips to Hong Kong was part of his rehabilitation. I disallow these claims.

In the result there will be judgment (a) for the first plaintiff, Lai Chi Kay, in the sum of $727,514 and costs; (b) for the second plaintiff in the sum of $8,500 and costs.

The claims of the third and fourth plaintiffs are dismissed.

Order accordingly.

Solicitors: *Lee & Lee; Wong & Partners.*

METRO (PTE.) LTD. & ANOR. v. WORMALD SECURITY (S.E.A.) PTE. LTD.

[O.C.J. (Kulasekaram J.) June 18, 1981]
[Singapore — Suit No. 3073 of 1976]

Contract — Service contract — Breach admitted — Dispute as to liability — Non-repudiation of contract by plaintiffs — Reliance by defendants on Exemption Clause — Clause wide enough to cover breach.

Contract — Breach of — Loss suffered by plaintiffs — Claim for damages — Non-repudiation of contract by plaintiffs — Breach admitted — Dispute as to liability — Exemption Clause to cover breach.

The plaintiffs in this case were the owners of the "Metro" group department stores. The defendants who were suppliers of security alarm systems also undertook to instal, maintain and man these alarm systems for the detection of any unauthorised breaking into or out of the premises to minimize thefts or other damage to goods. By an "Installation and Service Agreement" of June 26, 1974 made between Metro Holdings Ltd. for and on behalf of the plaintiffs (the customer) the defendants (the Company) agreed to instal in the plaintiffs' premises at Beach Road, a security alarm system and to maintain and man the same for an initial period of 12 months for $7,086 installation charges and $175 per month, service fee. Clause 4(ii) of the said Agreement states that "where no keys to the customer's premises are held by the Company the Customer or such person as the Customer has nominated for this purpose will be notified as quickly as possible and if the customer wishes the police will be notified of the customer's anticipated time of arrival at the premises". None of the keys were held by the defendants. The plaintiffs by a letter dated November 4, 1974, had nominated five persons to be notified (as required by Clause 4(ii)) in case of any emergency.

The security alarm system was duly installed on the said premises by November 1974 and thereafter the parties had started operating the alarm system. On February 2, 1975 at 10 p.m. the management carried out the usual procedure to see that all the doors were locked and secured and all the

merchandise in the store were either locked or kept away. Normal procedures were observed to ensure that all the customers had left the store. The alarm was initiated before closing the premises. The next morning when the management entered the store ready for the commencement of business they discovered that the store had been broken into. A large quantity of valuable merchandise were missing. The parties agreed that the value of goods lost be fixed at $108,756.67.

At the outset of the hearing the defendants admitted that on the night of February 2, 1975 towards the early hours of the morning of February 3, 1975 the defendants upon receiving the alarm signals concerning the said premises in their control room had failed to notify the plaintiffs or the police about them. The defendants agreed that they were in breach of clause (ii) of the Agreement. The plaintiffs however had not elected to repudiate or rescind the agreement and admitted that inspite of the said breach the Agreement subsists.

The defendants resisted the plaintiffs' claim for damages for loss suffered arising from the said breach. The defendants relied on clause 6 of the Agreement which provided that "the Company shall not be liable for . . . any loss or damage suffered by the customer howsoever caused and without limiting the generality of the foregoing whether caused or arising by reason of or on account of any failure defect or malfunctioning of the Equipment, the Control Unit or any other equipment or circuit or by reason of or on account of any act or omission whether negligent or otherwise on the part of the Company or its servants or agents whether in respect of the Equipment or the Control Unit or any other equipment or circuit or the design or operation thereof or in any other respect whatsoever or alarm or on account of the non-receipt of any alarm."

Held, dismissing the plaintiffs' claim: (1) the wording of clause 6 is clear and unambiguous and is in very wide terms and covers the present claim;

(2) the parties are of equal bargaining powers and there is no evidence that the parties did not freely agree to the terms of the clause;

(3) by allowing this claim for the breach of contract to be fully covered by the exemption clause, it would not in any way be tantamount to depriving the plaintiffs' stipulations of any contractual force and in effect reducing the contract to a mere declaration of intent only; there is therefore no reason why effect should not be given to it.

Cases referred to:-

(1) *Harbutt's Plasticine Ltd.* v. *Wayne Tank and Pump Co. Ltd.* [1970] 1 All E.R. 225.

(2) *Wathes (Western) Ltd.* v. *Austins (Menswear) Ltd.* [1976] 1 Lloyd's Rep. 14.

(3) *Photo Production Ltd.* v. *Securicor Transport Ltd.* [1980] 1 All E.R. 556.

CIVIL SUIT.

Henry Hangchi (*Yeo Kee Chin* with him) for the plaintiffs.

Harry Elias (*Goh Joon Seng* with him) for the defendants.

Cur. Adv. Vult.

Kulasekaram J.: The plaintiffs' claim in this action is for damages from the defendants for loss they had suffered arising from a breach of a service contract they had with them.

The case for the plaintiffs is briefly this. They are the owners of a three storied department store in Beach Road known as "Metro" group department stores hereinafter referred to as "the said premises" and the defendants supply security alarm systems and also undertake the installation, maintenance and manning of these alarm systems for the detection of any unauthorised breaking into or out of the premises to minimize thefts or other damage to goods in the premises. By an "Installation and Service Agreement" dated June 26, 1974 made between Metro Holdings Ltd. for and on behalf of the plaintiffs, referred to as "the customer" of the one part and the defendants, as "the Company", of the other part, the defendants agreed for a consideration of a fixed price of $7,086 as installation charges and a service fee of $175 per month to instal in the said premises a security alarm system and to maintain and man the same for an initial period of twelve months. A copy of this Agreement is the document AB12-13. One of the obligations that the defendants undertook to perform under this Agreement was that provided by clause 4(ii) of the Agreement and reads: —

"CONTROL ROOM SERVICES. Upon receipt of an alarm signal at the Company's Control Room which is not identified by code as an authorised entry into the customer's premises the Company will carry out the following service procedures:—

(i) ....

(ii) where no keys to the customer's premises are held by the Company the customer or such person as the customer has nominated for this purpose will be notified as quickly as possible and if the customer wishes the police will be notified of the customer's anticipated time of arrival at the premises."

It is not in dispute that none of the keys to the said premises were held by the defendants. In pursuance of clause 4(ii) the plaintiffs had nominated and informed the defendants by letter dated November 4, 1974, AB1-2, that in case of any emergency or other matters relating to the operation of the security alarm system anyone of the five persons named therein by them should be notified by the defendants.

The security alarm system envisaged under this Agreement was duly installed on the said premises by November 1974 and thereafter the parties had started operating the alarm system. The evidence was that when the Department Store closed for business on the evening of February 2, 1975 at 10 p.m. the normal procedures were observed to ensure that all the customers had left the store. The management also toured the store, floor by floor, to see that all the doors were locked and secured and the merchandise in the store was kept away arranged in an orderly manner. All valuable merchandise were locked up in show cases. They then initiated the alarm system and left the premises for the night. What was done that night was the normal routine procedure adopted every night at the close of business for the day.

The next morning when the management entered the store as usual to get the store ready for the commencement of business for that day they discovered that the store had been broken into and a large quantity of valuable merchandise consisting mainly of watches, cigarette lighters and pens, most of which items had been locked up in show cases were missing from the ground floor of the premises. The plaintiffs claimed that the value of goods lost that night amounted to $144,918.35. However during the course of the hearing the parties had agreed amongst themselves that the quantum of the value of goods lost be fixed at $108,756.67.

At the outset of the hearing of this case the defendants admitted that on the night of 2nd towards

the early hours of the morning of February 3, 1975 the defendants upon receiving the alarm signals concerning the said premises in their control room had failed to notify the plaintiffs or, if need be, the police also about them. In the circumstances they agreed they were in clear breach of clause 4(ii) of the Installation & Service Agreement AB12. The plaintiffs too on their part had admitted that upon such a breach by the defendants, they (the plaintiffs) had not elected to repudiate or rescind the Agreement and they further admitted that inspite of the breach in question the Installation & Service Agreement still subsists.

The defendants though they admitted the breach of contract, nevertheless resisted the claim of the plaintiffs by pleading in their defence the provisions of clause 6 of the said Agreement AB12-13, which reads: —

"6. The company shall not be liable for or in respect of any loss or damage suffered by the customer howsoever caused or arising and without limiting the generality of the foregoing whether caused or arising by reason of or on account of any failure defect or malfunctioning of the Equipment, the Control Unit or any other equipment or circuit or by reason of or on account of any act or omission whether negligent or otherwise on the part of the company or its servants or agents whether in respect of the Equipment or the Control Unit or any other equipment or circuit or the design or operation thereof or in any other respect whatsoever or alarm or on account of the non-receipt of any alarm."

and submitting that therefore they were exempted from liability from any such claim for damage or loss arising from such a breach of the said contract.

The plaintiffs on the other hand both pleaded and submitted that the breach of clause 4(ii) which the defendants have now admitted goes to the very root of the contract and was a fundamental breach of the contract. They further relied on the decision in the English Court of Appeal case, *Harbutt's Plasticine Ltd.* v. *Wayne Tank and Pump Co. Ltd.*,[1] where it was held that there is a rule of law that where a fundamental breach of contract has taken place and where the injured party has elected to repudiate or rescind the contract in question then the other party cannot rely on an exemption clause, such as clause 6 here, to answer the claim of the injured party for any loss or damage which they had suffered as a result of the breach of contract.

In the instant case here it is also not in dispute that the injured party, that is the plaintiffs, have not elected to repudiate or rescind the said contract consequent on its breach and the said contract still continues to subsist. The plaintiffs are in no way dismayed by this situation as they rely very heavily on a later decision of the English Court of Appeal in *Wathes (Western) Ltd.* v. *Austins (Menswear) Ltd.*,[2] where the principle I have above stated in *Harbutt's Plasticine Ltd.* v. *Wayne Tank and Pump Co. Ltd.* case was extended even to the situation where the injured party had not elected to rescind the contract in question consequent upon a fundamental breach. When such an injured party brought an action for damages arising from a fundamental breach of contract even then the other party could not rely on an exemption clause to resist that claim. For purposes of that claim the exemption clause would appear to be treated as no longer in force as a result of that fundamental breach.

The defendants answered these contentions of the plaintiffs under two heads.

First, they submitted that the breach in question which they had admitted was not a fundamental breach which went to the root of the contract. They submitted that under the said Agreement AB12-13 they had first of all to instal the alarm system albeit for a separate fixed price and in addition they had to maintain and man the alarm system and their control room round the clock 24 hours of the day for the service fee of a modest sum of $175 per month. Their obligation to inform the plaintiffs or their nominees under clause 4(ii) was only one of their obligations under the contract and their failure in that obligation did not completely destroy the main purpose of the contract.

Secondly, even if it was a fundamental breach of that contract, though not admitted by them, yet the rule in *Harbutt's Plasticine* case to which I have already referred does not apply here as the plaintiffs subsequent to the said fundamental breach had not elected to repudiate or rescind the contract. As the contract continued to subsist so did the exemption clause 6 and they are entitled to rely on it. The clause itself is in very clear terms and there is no reason why effect should not be given to it. It is in very wide terms and clearly exempts the defendants from any claim for loss or damages arising out of the breach in question here. As for the extended rule in *Wathes (Western) Ltd.* v. *Austins (Menswear) Ltd.* case, the defendants submitted it was not consistent with the other authorities and in their submission was wrongly decided and so they invite this court not to follow it.

Since then the House of Lords in *Photo Production Ltd.* v. *Securicor Transport Ltd.*,[3] has overruled both the decisions in *Harbutt's Plasticine* case and in *Wathes (Western) Ltd.* case.

Lord Wilberforce in overruling the case of *Harbutt's Plasticine Ltd.* v. *Wayne Tank and Pump Co. Ltd.* had said: —

"... I have indeed, been unable to understand how the doctrine can be reconciled with the well accepted principle of law, stated by the highest modern authority, that when in the context of a breach of contract one speaks of 'termination' what is meant is no more than that the innocent party or, in some cases, both parties are excused from further performance. Damages, in such cases, are then claimed under the contract, so what reason in principle can there be for disregarding what the contract itself says about damages, whether it 'liquidates' them, or limits them, or excludes them? These difficulties arise in part from uncertain or inconsistent terminology. A vast number of expressions are used to describe situations where a breach has been committed by one party of such a character as to entitle the other party to refuse further performance; discharge, rescission, termination, the contract is at an end, or dead, or displaced; clauses cannot survive, or simply go. I have come to think that some of these difficulties can be avoided; in particular the use of 'rescission', even if distinguished from rescission ab initio, as an equivalent for discharge, ... may lead to confusion in others. To plead for complete uniformity may be to cry for the moon. But what can and ought to be avoided is to make use of these confusions in order to produce a concealed and unreasoned legal innovation: to pass, for example, from saying that a party, victim of a breach of contract, is

entitled to refuse further performance, to saying that he may treat the contract as at an end, or as rescinded, and to draw from this the proposition, which is not analytical but one of policy, that all or (arbitrarily) some of the clauses of the contract lose, automatically, their force, regardless of intention...."

The effect of this decision so far as our case is concerned is that the question as to whether the failure to perform the obligations under clause 4(ii) gives rise to a fundamental breach of contract or merely a simple breach of contract, and the further question whether, if it was a fundamental breach of contract, has the other party, the injured party, elected to terminate the contract or not, do not affect the issue before us. All that has to be considered is whether the exemption clause 6 here applies and gives complete exemption to the claim before us arising from that particular breach of contract, as claimed by the defendants. It is merely a matter of construing clause 6 of the contract having regard to all the circumstances here and reading it *contra proferentem*. To my mind the wording of clause 6 is clear and unambiguous and is in very wide terms and covers the claim such as is before us. The parties are of equal bargaining power and there is absolutely no evidence that the parties did not freely agree to the terms of the clause. Moreover by allowing this claim for the breach of contract here to be fully covered by this exemption clause it would not in any way be tantamount to depriving the plaintiffs' stipulations of any contractual force and in effect reducing the contract to a mere declaration of intent only. I can see no reason why effect should not be given to it.

Though it will not be necessary now to deal with the only other ground which the defendants relied on in answer to the plaintiffs' claim, I propose to refer to this ground and give my views briefly on it as that ground was also seriously canvassed before me. It is their contention that on the evidence here the second plaintiffs were the only ones who had suffered loss and damage and not the first plaintiffs but the second plaintiffs are not a party to the contract and therefore they have no obligations against the second plaintiffs under the contract here and therefore the claim of both the plaintiffs must fail.

The evidence revealed that first and second plaintiffs were both wholly owned subsidiaries of their parent Company Metro Holdings Ltd. One Mr. Soh Guan Kiat, an executive of Metro Holdings Ltd. with authority to act for Metro Pte. Ltd., the first plaintiffs, and Metro (Golden Mile) Pte. Ltd., the second plaintiffs, had negotiated the contract, AB12-13, and had signed it on behalf of Metro Holdings Ltd. who were acting as the agent for the first plaintiffs. Mr. Soh had written the first plaintiffs as the "customer" in that contract. The first plaintiffs as the "customer" under that contract was responsible for the installation and service fees and had in fact paid them.

The alarm system under the contract was installed at the premises of the Metro Department Store at Beach Road. This store was owned by the second plaintiffs. The first plaintiffs supplied the second plaintiffs with all the goods that second plaintiffs sold in their departmental store at Beach Road. It would appear that the goods were originally owned by the first plaintiffs and then by internal book entries recording the sale to the second plaintiffs they would become owners of the goods as and when the book entries were made. It was the second plaintiffs who wrote the letter AB1-2 dated November 4, 1974 to the defendants nominating the five persons anyone of whom was to be notified by the defendants under clause 4(ii) in case of any emergency. In fact Mr. Soh had signed this letter as the manager of the second plaintiffs. The subsequent conduct of the parties and their correspondence showed that the defendants had tacitly accepted both plaintiffs as "customers" of theirs under the contract and as far as the defendant are concerned the second plaintiffs are no strangers to them but parties to this contract.

I find having regard to the factual position, there is no substance in this contention of the defendants.

In the result this action is dismissed with costs.

Claim dismissed.

Solicitors: *Yeo Kee Chin & Co.; Drew & Napier.*